

S. 908

At the request of Mr. BAYH, the name of the Senator from Colorado (Mr. UDALL) was added as a cosponsor of S. 908, a bill to amend the Iran Sanctions Act of 1996 to enhance United States diplomatic efforts with respect to Iran by expanding economic sanctions against Iran.

S. 924

At the request of Ms. MIKULSKI, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 924, a bill to ensure efficient performance of agency functions.

S. 942

At the request of Mr. GRASSLEY, the name of the Senator from Delaware (Mr. CARPER) was added as a cosponsor of S. 942, a bill to prevent the abuse of Government charge cards.

S. 984

At the request of Mrs. BOXER, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 984, a bill to amend the Public Health Service Act to provide for arthritis research and public health, and for other purposes.

S. 1010

At the request of Mr. AKAKA, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 1010, a bill to establish a National Foreign Language Coordinator Council.

S. 1023

At the request of Mr. DORGAN, the names of the Senator from South Dakota (Mr. THUNE), the Senator from Massachusetts (Mr. KERRY) and the Senator from Arkansas (Mr. PRYOR) were added as cosponsors of S. 1023, a bill to establish a non-profit corporation to communicate United States entry policies and otherwise promote leisure, business, and scholarly travel to the United States.

S. CON. RES. 14

At the request of Mrs. LINCOLN, the name of the Senator from Mississippi (Mr. WICKER) was added as a cosponsor of S. Con. Res. 14, a concurrent resolution supporting the Local Radio Freedom Act.

S. RES. 71

At the request of Mr. WYDEN, the names of the Senator from Illinois (Mr. DURBIN) and the Senator from Alaska (Ms. MURKOWSKI) were added as cosponsors of S. Res. 71, a resolution condemning the Government of Iran for its state-sponsored persecution of the Baha'i minority in Iran and its continued violation of the International Covenants on Human Rights.

S. RES. 141

At the request of Mr. JOHNSON, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. Res. 141, a resolution recognizing June 2009 as the first National Hemorrhagic Telangiectasia (HHT) month, established to increase awareness of HHT, which is a complex genetic blood vessel disorder that affects

approximately 70,000 people in the United States.

AMENDMENT NO. 1079

At the request of Ms. LANDRIEU, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of amendment No. 1079 proposed to H.R. 627, a bill to amend the Truth in Lending Act to establish fair and transparent practices relating to the extension of credit under an open end consumer credit plan, and for other purposes.

AMENDMENT NO. 1129

At the request of Mrs. MURRAY, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of amendment No. 1129 intended to be proposed to H.R. 627, a bill to amend the Truth in Lending Act to establish fair and transparent practices relating to the extension of credit under an open end consumer credit plan, and for other purposes.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. FEINGOLD (for himself and Mr. BROWNBACK):

S. 1067. A bill to support stabilization and lasting peace in northern Uganda and areas affected by the Lord's Resistance Army through development of a regional strategy to support multilateral efforts to successfully protect civilians and eliminate the threat posed by the Lord's Resistance Army and to authorize funds for humanitarian relief and reconstruction, reconciliation, and transitional justice, and for other purposes; to the Committee on Foreign Relations.

Mr. FEINGOLD. Mr. President, today I am pleased to introduce the Lord's Resistance Army Disarmament and Northern Uganda Recovery Act of 2009, and I am pleased to do so with a great champion on this issue: Senator SAM BROWNBACK. For many years, we have both sought to bring attention to the terror orchestrated by the Lord's Resistance Army, the LRA, and the suffering of the people of northern Uganda. We have come a long way in just a few years, thanks especially to young Americans who have become increasingly aware of and outspoken about this horrific situation. As a result, the U.S. has made increased efforts to help end this horror. Those efforts have yielded some success, but if we are now to finally see this conflict to its end, we need to commit to a proactive strategy to help end the threat posed by the LRA and support reconstruction, justice, and reconciliation in northern Uganda. This bill seeks to do just that.

For over two decades, northern Uganda was caught in a war between the Ugandan military and rebels of the Lord's Resistance Army, leading at its height to the displacement of 1.8 million people, nearly 90 percent of the region's population. Just a few years ago, northern Uganda was called the world's

worst neglected humanitarian crisis. In 2007, I visited displacement camps in northern Uganda and saw firsthand the terrible conditions and the desperation of people forced to endure such conditions year after year. Meanwhile, the LRA survived throughout this conflict by kidnapping an estimated 66,000 children, indoctrinating them, and forcing them to become child soldiers.

In recent years, the LRA have come under increasing pressure. In 2005 and 2006, they largely withdrew from northern Uganda and moved into the border region between northeastern Congo, southern Sudan and even the Central African Republic. Then for almost two years, there was a lull in the violence as representatives from the Ugandan government and LRA engaged in sporadic peace negotiations in southern Sudan. The parties brokered a comprehensive agreement, but then hopes were dashed as the LRA's megalomaniac leader Joseph Kony refused to sign the agreement and reports surfaced that the LRA had been conducting new abductions to replenish his rebel group.

In December 2008, the Ugandan, Congolese and South Sudanese militaries launched a joint offensive against the LRA's primary bases in northeastern Congo. The operation failed to apprehend Kony and over the following two months, his forces retaliated against civilians in the region, leaving over 900 people dead. It's tragically clear that insufficient attention and resources were devoted to ensuring the protection of civilians during the operation. Before launching any operation against the rebels, the regional militaries should have ensured that their plan had a high probability of success, anticipated contingencies, and made precautions to minimize dangers to civilians. It is widely known that when facing military offensive in the past, the LRA have quickly dispersed and committed retaliatory attacks against civilians.

However, this botched operation does not mean that we should just give up on the goal of ending the massacres and the threat to regional stability posed by this small rebel group. Moreover, given that the U.S. provided assistance and support for this operation at the request of the regional governments, we have a responsibility to help see this rebel war to its end. In order to do that, I strongly believe we need a regional strategy to guide U.S. support—which includes political economic, intelligence and military support—for a multilateral effort to protect civilians and permanently end the threat posed by the LRA. The Lord's Resistance Army Disarmament and Northern Uganda Recovery Act of 2009 requires of the administration to develop such a strategy. It leaves it up to the discretion of the administration to determine the most effective way forward, but it ensures this issue will not get put on the back burner and that we will not continue to rely on a piecemeal approach.

In addition to removing the threat posed by the LRA, we cannot lose sight of the importance that the Ugandan government address the conditions out of which the LRA emerged and which could give rise to future conflict if unchanged. Rebuilding northern Uganda's institutions and addressing political and economic grievances is the surest safeguard against future violence and instability. The government of Uganda committed last year to move forward with that reconstruction and reconciliation process under the framework of its Peace, Recovery and Development, the PRDP plan. International donors, including the United States, have already put forth substantial funds for that process. However, thus far it has been hampered by a lack of strategic coordination, weak leadership and the government's limited capacity. In particular, there has been very little progress toward establishing the mechanisms envisaged by the peace agreement to address the original causes of the war and promote reconciliation and justice.

Our legislation recognizes the importance of helping the Ugandan government to reinvigorate the PRDP process. The second part of the Lord's Resistance Army Disarmament and Northern Uganda Recovery Act of 2009 encourages the U.S. to increase assistance in the upcoming fiscal years for recovery with the condition that the Ugandan government demonstrates a commitment to genuine, transparent and accountable reconstruction. We should better leverage our contributions to ensure that U.S. taxpayer dollars are used wisely. Finally, this legislation authorizes a small amount of additional assistance to see that mechanisms are finally established to promote accountability and reconciliation in Uganda on both local and national levels. A failure to address the underlying political grievances in northern Uganda could lead to new conflicts in the future.

As my colleagues know, I make it a practice to pay for all bills that I introduce, and the authorization in this bill is offset by reducing funds appropriated for excess secondary inventory for the Department of the Air Force. A report by the Government Accountability Office in 2007 found that more than half of the Air Force's secondary inventory or spare parts, worth roughly \$31.4 billion, were not needed to support required on-hand and on-order inventory levels for fiscal years 2002 through 2005. The GAO report concluded that this is not only wasteful, but could also negatively impact readiness. The Air Force has acknowledged that it currently has over \$100 million of spare parts on order for which it has no need.

Some may disagree with me on the need for an offset, but last year's Office of Management and Budget's projections confirm that we have the biggest budget deficit in the history of our country. We cannot afford to be fiscally irresponsible so we must make

choices to ensure that our children and grandchildren do not bear the burden of our reckless spending. I believe reducing the excess secondary inventory for the Department of the Air Force by \$40 million, a small amount, to pay for this bill is a responsible move that we can all support.

Americans from all states and all walks of life have been touched by the stories of children from northern Uganda abducted and forced to commit unspeakable acts. Congress, too, has a long history of being involved with efforts to help end this rebel war, dating back to the Northern Uganda Crisis Response Act that we passed in 2004, which committed the United States to work vigorously for a lasting resolution to the conflict. The Lord's Resistance Army Disarmament and Northern Uganda Recovery Act of 2009 reaffirms and refocuses that commitment to help see this—one of Africa's longest running and most gruesome rebel wars—to its finish. I believe that, with the necessary leadership and strategic vision envisioned by this legislation, we can contribute to that end. I urge my colleagues to support this bill.

By Mr. REED:

S. 1073. A bill to provide for credit rating reforms, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. REED. Mr. President, I rise to introduce the Rating Accountability and Transparency Enhancement, RATE, Act to strengthen the Securities and Exchange Commission's, SEC's, oversight of credit rating agencies and improve the accountability and accuracy of credit ratings.

Credit ratings have taken on systemic importance in our financial system, and have become critical to capital formation, investor confidence, and the efficient performance of the U.S. economy. However, in recent months we have witnessed a significant amount of market instability stemming in part from the failure of these agencies to accurately measure the risks associated with mortgage-backed securities and other more complex products.

As the Chairman of the Securities, Insurance, and Investment Subcommittee of the Senate Banking, Housing, and Urban Affairs Committee, I chaired a hearing in September of 2007 to examine the role of credit rating agencies in the mortgage crisis, and these issues were also addressed at a hearing by the full Committee last year. From these hearings, it is clear that problems at credit rating agencies contributed to the significant financial sector instability our country has been experiencing. In fact, an SEC investigation last summer found that credit rating agencies such as Moody's, Standard & Poor's, and Fitch Ratings conducted weak analyses and failed to maintain appropriate independence from the issuers whose securities they rated.

Credit rating agencies are in the business of providing investors with unbiased analysis, but the current incentive structure gives them too much leeway to hand out unjustifiably favorable ratings. Let us be clear: not every rating is suspect and these firms provide crucial information for investors and the marketplace, but credit rating agencies like any other industry should be held accountable if they knowingly or recklessly mislead investors.

According to a mortgage industry trade publication, the three major credit rating agencies have each downgraded more than half of the subprime mortgage-backed securities they originally rated between 2005 and 2007. Ratings agencies made these mistakes in part because of conflicts of interest and other problems with internal controls, underscoring the need for enhanced oversight of this industry.

The bill I introduce today gives the SEC strong new authority to oversee and hold rating agencies accountable for conflicts of interest and other internal control deficiencies that have weakened ratings in the past. The bill includes a carefully crafted liability provision that allows investors to take action when a rating agency knowingly or recklessly fails to review key information in developing the rating.

It also enhances disclosure requirements to allow investors and others to learn about the methodologies, assumptions, fees, and amount of due diligence associated with ratings. It requires rating agencies to notify users and promptly update ratings when model or methodology changes occur. Finally, the bill requires ratings agencies to have independent compliance officers, and to take other actions, to prevent potential conflicts of interest.

I hope my colleagues will join me in helping improve the accountability and transparency of credit ratings that are so critical to the functioning of our financial markets.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 1073

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Rating Accountability and Transparency Enhancement Act of 2009" or the "RATE Act".

#### SEC. 2. FINDINGS.

Congress finds that—

(1) because of the systemic importance of credit ratings and the reliance placed on them by individual and institutional investors and financial regulators, the activities and performances of credit rating agencies, including nationally recognized statistical rating organizations, are the subject of national public interest, as they are central to capital formation, investor confidence, and the efficient performance of the United States economy;

(2) credit rating agencies, including nationally recognized statistical rating organizations, play a critical "gatekeeper" role

that is functionally similar to that of securities analysts, who evaluate the quality of securities, and auditors, who review the financial statements of firms, and such role justifies a similar level of public oversight and accountability;

(3) because credit rating agencies perform evaluative and analytical services on behalf of clients, their activities are fundamentally commercial in character and should be subject to the same standards of liability and oversight as apply to auditors and securities analysts;

(4) in certain of their roles, particularly in advising arrangers of structured financial products on potential ratings of such products, credit rating agencies face conflicts of interest that need to be carefully monitored and that therefore should be addressed explicitly in legislation in order to give clear authority to the Securities and Exchange Commission;

(5) in the recent credit crisis, the ratings of structured financial products have proven to be inaccurate, and have contributed to the mismanagement of risks by financial institutions and investors, which impacts the health of the economy in the United States and around the world; and

(6) credit rating agencies should determine their ratings independently, without regulatory approval of methodologies, in order to avoid overreliance on ratings and to ensure that the rating agencies, rather than the Securities and Exchange Commission, are accountable for such methodologies, except that regulators should have strong authority to ensure that all other aspects of rating agency activities are designed to ensure the highest quality ratings and accountability for those creating them.

### SEC. 3. ENHANCED REGULATION OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.

Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7) is amended—

(1) in subsection (c)—

(A) in the second sentence of paragraph (2), by inserting “including the requirements of this section,” after “Notwithstanding any other provision of law,”; and

(B) by adding at the end the following:

“(3) REVIEW OF INTERNAL CONTROLS FOR DETERMINING CREDIT RATINGS.—

“(A) IN GENERAL.—Credit ratings by, and the policies, procedures, and methodologies employed by, each nationally recognized statistical rating organization shall be reviewed by the Commission to ensure that—

“(i) the nationally recognized statistical rating organization has established and documented a system of internal controls for determining credit ratings, taking into consideration such factors as the Commission may prescribe by rule; and

“(ii) the nationally recognized statistical rating organization adheres to such system; and

“(iii) the public disclosures of the nationally recognized statistical rating organization required under this section about its ratings, methodologies, and procedures are consistent with such system.

“(B) SCOPE OF REVIEWS.—The Commission shall conduct the reviews required by this paragraph—

“(i) for all types of credit ratings; and

“(ii) for new credit ratings, in a timely manner.

“(C) MANNER AND FREQUENCY.—The Commission shall conduct reviews required by this paragraph in a manner and with a frequency to be determined by the Commission.

“(4) PROVISION OF INFORMATION TO THE COMMISSION.—Each nationally recognized statistical rating organization shall make available and maintain such records and information, for such a period of time, as the Com-

mission may prescribe, by rule, as necessary for the Commission to conduct the reviews under this subsection.”;

(2) in subsection (d)—

(A) by inserting “fine,” after “censure,” each place that term appears;

(B) in the subsection heading, by inserting “FINE,” after “CENSURE,”;

(C) in paragraph (4), by striking “or” at the end;

(D) in paragraph (5), by striking the period at the end and inserting “; or”; and

(E) by adding at the end the following:

“(6) fails to conduct sufficient surveillance to ensure that credit ratings remain current, accurate, and reliable.”;

(3) by amending subsection (h) to read as follows:

“(h) MANAGEMENT OF CONFLICTS OF INTEREST.—

“(1) ORGANIZATION POLICIES AND PROCEDURES.—Each nationally recognized statistical rating organization shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the business of such nationally recognized statistical rating organization and affiliated persons and affiliated companies thereof, to address, manage, and disclose any conflicts of interest that can arise from such business.

“(2) GOVERNANCE IMPROVEMENTS AT NRSRO.—Each nationally recognized statistical rating organization shall establish governance procedures to manage conflicts of interest, consistent with the protection of users of credit ratings, in accordance with rules issued by the Commission pursuant to paragraph (3).

“(3) COMMISSION AUTHORITY.—The Commission shall issue final rules to prohibit, or require the management and disclosure of, any conflicts of interest relating to the issuance of credit ratings by a nationally recognized statistical rating organization, including—

“(A) conflicts of interest relating to the manner in which a nationally recognized statistical rating organization is compensated by the obligor, or any affiliate of the obligor, for issuing credit ratings or providing related services;

“(B) conflicts of interest relating to the provision of consulting, advisory, or other services by a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, and the obligor, or any affiliate of the obligor;

“(C) disclosure of business relationships, ownership interests, affiliations of nationally recognized statistical rating organization board members with obligors, or any other financial or personal interests between a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, and the obligor, or any affiliate of the obligor;

“(D) disclosure of any affiliation of a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, with any person that underwrites securities, entities, or other instruments that are the subject of a credit rating; and

“(E) any other potential conflict of interest, as the Commission deems necessary or appropriate in the public interest or for the protection of users of credit ratings.

“(4) COMMISSION RULES.—The rules issued by the Commission under paragraph (3) shall include—

“(A) the establishment of a system of payment for each nationally recognized statistical rating organization that requires that payments are structured to ensure that the nationally recognized statistical rating organization conducts accurate and reliable sur-

veillance of ratings over time, and that incentives for accurate ratings are in place;

“(B) a prohibition on providing credit ratings for structured products that it advised on, in the form of assistance, advice, consultation, or other aid that preceded its retention by any issuer, underwriter, or placement agent to provide a rating for the securities in question (or any assistance provided after such point for which additional compensation is paid directly or indirectly);

“(C) requirements that a nationally recognized statistical rating organization disclose any relationship or affiliation described in subparagraphs (C) and (D) of paragraph (3);

“(D) a requirement that, in each credit rating report issued to the public, a nationally recognized statistical rating organization disclose the type and number of ratings it has provided to the obligor or affiliates of the obligor, including the fees it has billed for the credit rating and aggregate amount of fees in the preceding 2 years that it has billed to the particular obligor or its affiliates; and

“(E) any other requirement as the Commission deems necessary or appropriate in the public interest, or for the protection of users of credit ratings.

“(5) LOOK-BACK REQUIREMENT.—

“(A) REVIEW BY NRSRO.—In any case in which an employee of an obligor or an issuer or underwriter of a security or money market instrument was employed by a nationally recognized statistical rating organization and participated in any capacity in determining credit ratings for the obligor or the securities or money market instruments of the issuer during the 1-year period preceding the date of the issuance of the credit rating, the nationally recognized statistical rating organization shall—

“(i) conduct a review to determine whether any conflicts of interest of such employee influenced the credit rating; and

“(ii) take action to revise the rating if appropriate, in accordance with such rules as the Commission shall prescribe.

“(B) REVIEW BY COMMISSION.—The Commission shall conduct periodic reviews of the look-back policies described in subparagraph (A) and the implementation of such policies at each nationally recognized statistical rating organization to ensure they are appropriately designed and implemented to most effectively eliminate conflicts of interest in this area.

“(6) PERIODIC REVIEWS.—

“(A) REVIEWS REQUIRED.—The Commission shall conduct periodic reviews of governance and conflict of interest procedures established under this subsection to determine the effectiveness of such procedures.

“(B) TIMING OF REVIEWS.—The Commission shall review and make available to the public the code of ethics and conflict of interest policy of each nationally recognized statistical rating organization—

“(i) not less frequently than once every 3 years; and

“(ii) whenever such policies are materially modified or amended.”;

(4) by amending subsection (j) to read as follows:

“(j) DESIGNATION OF COMPLIANCE OFFICER.—

“(1) IN GENERAL.—Each nationally recognized statistical rating organization shall designate an individual to serve as a compliance officer.

“(2) DUTIES.—The compliance officer shall—

“(A) report directly to the board of the nationally recognized statistical rating organization (or the equivalent thereof) or to the senior officer of the nationally recognized statistical rating organization; and

“(B) shall—

“(i) review compliance with policies and procedures to manage conflicts of interest and assess the risk that such compliance (or lack of such compliance) may compromise the integrity of the credit rating process;

“(ii) review compliance with internal controls with respect to the procedures and methodologies for determining credit ratings, including quantitative and qualitative models used in the rating process, and assess the risk that such compliance with the internal controls (or lack of such compliance) may compromise the integrity and quality of the credit rating process;

“(iii) in consultation with the board of the nationally recognized statistical rating organization, a body performing a function similar to that of a board, or the senior officer of the nationally recognized statistical rating organization, resolve any conflicts of interest that may arise;

“(C) be responsible for administering the policies and procedures required to be established pursuant to this section; and

“(D) ensure compliance with securities laws and the rules and regulations issued thereunder, including rules promulgated by the Commission pursuant to this section.

“(3) LIMITATIONS.—No compliance officer designated under paragraph (1), may, while serving in such capacity—

“(A) perform credit ratings;

“(B) participate in the development of rating methodologies or models;

“(C) perform marketing or sales functions; or

“(D) participate in establishing compensation levels, other than for employees working for such officer.

“(4) OTHER DUTIES.—The compliance officer shall establish procedures for the receipt, retention, and treatment of—

“(A) complaints regarding credit ratings, models, methodologies, and compliance with the securities laws and the policies and procedures required under this section; and

“(B) confidential, anonymous complaints by employees or users of credit ratings.

“(5) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the nationally recognized statistical rating organization with the securities laws and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. Such compliance report shall accompany the financial reports of the nationally recognized statistical rating organization that are required to be furnished to the Commission pursuant to this section.”;

(5) in subsection (k)—

(A) by striking “, on a confidential basis.”;

(B) by striking “Each nationally” and inserting the following:

“(1) IN GENERAL.—Each nationally”; and

(C) by adding at the end the following:

“(2) EXCEPTION.—The Commission may treat as confidential any item furnished to the Commission under paragraph (1), the publication of which the Commission determines may have a harmful effect on a nationally recognized statistical rating organization.”;

(6) by amending subsection (p) to read as follows:

“(p) NRSRO REGULATION.—

“(1) IN GENERAL.—The Commission shall establish an office that administers the rules of the Commission with respect to the practices of nationally recognized statistical rating organizations in determining ratings, for the protection of users of credit ratings and in the public interest, and to ensure that credit ratings issued by such registrants are accurate and not unduly influenced by conflicts of interest.

“(2) STAFFING.—The office of the Commission established under this subsection shall be staffed sufficiently to carry out fully the requirements of this section.

“(3) RULEMAKING AUTHORITY.—The Commission shall—

“(A) establish by rule fines and other penalties for any nationally recognized statistical rating organization that violates the applicable requirements of this title; and

“(B) issue such rules as may be necessary to carry out this section with respect to nationally recognized statistical rating organizations.

“(q) TRANSPARENCY OF RATINGS PERFORMANCE.—

“(1) RULEMAKING REQUIRED.—The Commission shall, by rule, require that each nationally recognized statistical rating organization shall disclose publicly information on initial ratings and subsequent changes to such ratings for the purpose of providing a gauge of the accuracy of ratings and allowing users of credit ratings to compare performance of ratings by different nationally recognized statistical rating organizations.

“(2) CONTENT.—The rules of the Commission under this subsection shall require, at a minimum, disclosures that—

“(A) are comparable among nationally recognized statistical rating organizations, so that users can compare rating performance across rating organizations;

“(B) are clear and informative for a wide range of investor sophistication;

“(C) include performance information over a range of years and for a variety of classes of credit ratings, as determined by the Commission; and

“(D) are published and made freely available by the nationally recognized statistical rating organization, on an easily accessible portion of its website and in written form when requested by users.

“(r) CREDIT RATINGS METHODOLOGIES.—The Commission shall promulgate rules, for the protection of users of credit ratings and in the public interest, with respect to the procedures and methodologies, including qualitative and quantitative models, used by nationally recognized statistical rating organizations that require each nationally recognized statistical rating organization to—

“(1) ensure that credit ratings are determined using procedures and methodologies, including qualitative and quantitative models, that are approved by the board of the nationally recognized statistical rating organization, a body performing a function similar to that of a board, or the senior officer of the nationally recognized statistical rating organization, and in accordance with the policies and procedures of the nationally recognized statistical rating organization for developing and modifying credit rating procedures and methodologies;

“(2) ensure that when major changes to credit rating procedures and methodologies, including to qualitative and quantitative models, are made, that the changes are applied consistently to all credit ratings to which such changed procedures and methodologies apply and, to the extent the changes are made to credit rating surveillance procedures and methodologies, they are applied to current credit ratings within a time period to be determined by the Commission by rule, and that the reason for the change is disclosed publicly;

“(3) notify users of credit ratings of the version of a procedure or methodology, including a qualitative or quantitative model, used with respect to a particular credit rating; and

“(4) notify users of credit ratings when a change is made to a procedure or methodology, including to a qualitative or quantitative model, or an error is identified in a

procedure or methodology that may result in credit rating actions, and the likelihood of the change resulting in current credit ratings being subject to rating actions.

“(s) TRANSPARENCY OF CREDIT RATING METHODOLOGIES AND INFORMATION REVIEWED.—

“(1) IN GENERAL.—The Commission shall establish a form, to accompany each rating issued by a nationally recognized statistical rating organization—

“(A) to disclose information about assumptions underlying credit rating procedures and methodologies, the data that was relied on to determine the credit rating and, where applicable, how the nationally recognized statistical rating organization used servicer or remittance reports, and with what frequency, to conduct surveillance of the credit rating; and

“(B) that can be made public and used by investors and other users to better understand credit ratings issued in each class of credit rating issued by the nationally recognized statistical rating organization.

“(2) FORMAT.—The Commission shall ensure that the form established under paragraph (1)—

“(A) is designed in a user-friendly and helpful manner for users of credit ratings to understand the information contained in the report; and

“(B) requires the nationally recognized statistical rating organization to provide the appropriate content, as required by paragraph (3).

“(3) CONTENT.—Each nationally recognized statistical rating organization shall include on the form established under this subsection, along with its ratings—

“(A) the main assumptions included in constructing procedures and methodologies, including qualitative and quantitative models;

“(B) the potential shortcomings of the credit ratings, and the types of risks excluded from the credit ratings that the registrant is not commenting on (such as liquidity, market, and other risks);

“(C) information on the reliability, accuracy, and quality of the data relied on in determining the ultimate credit rating and a statement on the extent to which key data inputs for the credit rating were reliable or limited (including, any limits on the reach of historical data, limits in accessibility to certain documents or other forms of information that would have better informed the credit rating, and the completeness of certain information considered);

“(D) whether and to what extent third party due diligence services have been utilized, and a description of the information that such third party reviewed in conducting due diligence services;

“(E) a description of relevant data about any obligor, issuer, security, or money market instrument that was used and relied on for the purpose of determining the credit rating;

“(F) an explanation or measure of the potential volatility for the rating, including any factors that might lead to a change in the rating, and the extent of the change that might be anticipated under different conditions; and

“(G) additional information, including conflict of interest information, as may be required by the Commission.

“(4) DUE DILIGENCE SERVICES.—

“(A) CERTIFICATION REQUIRED.—In any case in which third party due diligence services are employed by a nationally recognized statistical rating organization or an issuer or

underwriter, the firm providing the due diligence services shall provide to the nationally recognized statistical rating organization written certification of such due diligence, which shall be subject to review by the Commission.

“(B) **FORMAT AND CONTENT.**—The nationally recognized statistical rating organizations shall establish the appropriate format and content for written certifications required under subparagraph (A), to ensure that providers of due diligence services have conducted a thorough review of data, documentation, and other relevant information necessary for the nationally recognized statistical rating organization to provide an accurate rating.”; and

(7) by amending subsection (m) to read as follows:

“(m) **ACCOUNTABILITY.**—

“(1) **IN GENERAL.**—The enforcement and penalty provisions of this title shall apply to a nationally recognized statistical rating organization in the same manner and to the same extent as such provisions apply to a registered public accounting firm or a securities analyst under the Federal securities laws for statements made by them, and such statements shall not be deemed forward-looking statements for purposes of section 21E.

“(2) **RULEMAKING.**—The Commission shall issue such rules as may be necessary to carry out this subsection.”.

#### SEC. 4. STATE OF MIND IN PRIVATE ACTIONS.

Section 21D(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-4(b)(2)) is amended by inserting before the period at the end the following: “, except that in the case of an action brought under this title for money damages against a nationally recognized statistical rating organization, it shall be sufficient, for purposes of pleading any required state of mind for purposes of such action, that the complaint shall state with particularity facts giving rise to a strong inference that the nationally recognized statistical rating organization knowingly or recklessly failed either to conduct a reasonable investigation of the rated security with respect to the factual elements relied upon by its own methodology for evaluating credit risk, or to obtain reasonable verification of such factual elements (which verification may be based on a sampling technique that does not amount to an audit) from other sources that it considered to be competent and that were independent of the issuer and underwriter”.

#### SEC. 5. REGULATIONS.

The Securities and Exchange Commission shall issue final rules and regulations, as required by the amendments made by this Act, not later than 365 days after the date of enactment of this Act.

#### SEC. 6. STUDY AND REPORT.

(a) **STUDY.**—The Comptroller General of the United States shall undertake a study of—

(1) the extent to which rulemaking the Securities and Exchange Commission has carried out the provisions of this Act;

(2) the appropriateness of relying on ratings for use in Federal, State, and local securities and banking regulations, including for determining capital requirements;

(3) the effect of liability in private actions arising under the Securities Exchange Act of 1934 and the exception added by section 4 of this Act; and

(4) alternative means for compensating credit rating agencies that would create incentives for accurate credit ratings and what, if any, statutory changes would be required to permit or facilitate the use of such alternative means of compensation.

(b) **REPORT.**—Not later than 30 months after the date of enactment of this Act, the

Comptroller General shall submit to Congress and the Securities Exchange Commission, a report containing the findings under the study required by subsection (a).

By Mrs. FEINSTEIN (for herself, Ms. SNOWE, and Mr. DURBIN):

S. 1077. A bill to regulate political robocalls, to the Committee on Rules and Administration.

Mrs. FEINSTEIN. Mr. President, I rise to introduce the Robocall Privacy Act of 2009.

This is a bill that is cosponsored by Senator SNOWE and Senator DURBIN, and that would protect American families from being inundated by automated political calls all through the day and night.

The bill would allow political outreach through these prerecorded “robocalls” to continue, but it would put some commonsense limits on them—to make sure that they are used in a way that informs voters, rather than harasses or misleads them.

In recent years, we have seen amazing development in technologies that help political candidates reach out to voters.

This is a good thing. Political speech is essential, and new technology that facilitates communication between candidates and voters serves to bolster the democratic process. When more information is available to voters, it promotes a more meaningful interchange of ideas.

The robocall is one of these recent developments. A robocall is a pre-recorded phone message that can be sent out to tens of thousands of voters at a low cost through computer automation.

With television and radio ads becoming so expensive, these robocalls can play a positive role in alerting voters to a candidate’s position and urging their support at the polls.

But it is also a technology that can be abused. We all have heard stories about people being called over and over and over again at all hours of the day and night.

I believe this is wrong. When these calls are used improperly, they interrupt American families during their private time at home and interfere with their privacy rights. They can also turn people away from the political process itself.

When people become frustrated or annoyed by calls that are commercial in nature, they have the option to request to be put on the Federal Trade Commission’s “Do Not Call” list. To date, millions of Americans have chosen to be part of that list.

But political calls are specifically exempted from this “Do Not Call” registry.

The First Amendment gives special protection to political speech, because the interchange of political ideas is essential to our democracy.

For that reason, the “Robocall Privacy Act” would not wholly ban political robocalls. It would, however, impose some carefully drawn restrictions

that I think we can all agree are reasonable.

Let me tell you exactly what the bill would do.

It would apply during the 60 days leading up to a general election and the 30 days before a primary election.

It would ban robocalls between the hours of 9 p.m. and 8 a.m.—to try to prevent these calls from disturbing people when they are sleeping or trying to put their children to sleep.

It would stop any campaign or group from making more than two robocalls to the same telephone number in a single day.

It would prohibit groups making robocalls from locking the “caller identification” number that is supposed to show up on many phones; and it would require robocallers to include an announcement at the beginning of each call explaining who is responsible for the call and that it is a prerecorded message. This is to prevent people from using these calls in a way that is misleading.

The enforcement provisions of this bill are simple and intent on stopping the worst of these calls.

The bill creates a civil fine for violators of the law, with additional fines for callers who willfully violate the law.

The bill also allows voters to sue to stop those calls immediately, but to not receive money damages.

A judge can order violators of the law to stop these abusive calls.

Why are these provisions so important? Let me give you a few facts and stories from recent elections:

According to the Pew Foundation, the use of robocalls is on the rise. By April of 2008, 39 percent of voters overall had received pre-recorded political calls, and a full 81 percent of likely caucus-goers in Iowa had been contacted with robocalls.

As the 2008 campaign went forward, voters expressed disagreement both with the number of these calls, and with their content, saying that some calls were deliberately misleading.

In 2007, hundreds of voters in New York were woken up at 2 a.m. because of a software programming error with a robocall. The calls were supposed to occur at 2 p.m.

In 2006, there were complaints about robocalls across the country. In the Nebraska 3rd District Congressional Election, voters complained to candidate Scott Kleeb when they received dozens of calls, containing poor-quality versions of his voice. Kleeb’s supporters claim that his voice was recorded, and used in an abusive robocall against him.

In Illinois, voters received a recorded call about U.S. Representative MELISSA BEAN that did not clearly identify the caller. Voters called Representative BEAN’s office to complain without listening to the entire message, which eventually identified an opposing party committee as the sponsor—but only after the time that most voters had

hung up. Representative Bean had to spend campaign funds informing voters she had not made that call.

In a Maryland race, voters in a conservative area received a middle-of-the-night robocall from the nonexistent "Gay and Lesbian Push," urging them to support one of the candidates. That candidate lost the election, in part because of the false, late-night call.

Quantity is an added problem. Voters frequently receive multiple robocall calls a day from the same group or candidate in the days leading up to an election.

The National Do Not Call Network—a nonprofit focused on this issue—has indicated that 40 percent of its membership says they received between 5 and 9 calls a day during the election season. Some frustrated voters reported receiving as many as 37 calls in a day.

This is just counterproductive. The goal of political speech is to inform and engage voters, not to mislead them or turn them off of the democratic process.

I am a strong supporter of the First Amendment and its protection for political speech, but these robocalls have become a problem. Something must be done.

I believe this bill presents the right solution—it imposes clear time, place, and manner restrictions, but it also allows campaigns and groups to use robocalls to inform voters of issues and their positions.

I think it is time for us to find a reasonable solution to these calls that are intruding on the privacy of the American home and misleading voters.

I want to thank Senators SNOWE and DURBIN for co-sponsoring this legislation, and I urge my colleagues to join me in supporting the Robocall Privacy Act of 2009.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 1077

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Robocall Privacy Act of 2009".

#### SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Abusive political robocalls harass voters and discourage them from participating in the political process.

(2) Abusive political robocalls infringe on the privacy rights of individuals by disturbing them in their homes.

#### SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) **POLITICAL ROBOCALL.**—The term "political robocall" means any outbound telephone call—

(A) in which a person is not available to speak with the person answering the call, and the call instead plays a recorded message; and

(B) which promotes, supports, attacks, or opposes a candidate for Federal office.

(2) **IDENTITY.**—The term "identity" means, with respect to any individual making a political robocall or causing a political robocall to be made, the name of the sponsor or originator of the call.

(3) **SPECIFIED PERIOD.**—The term "specified period" means, with respect to any candidate for Federal office who is promoted, supported, attacked, or opposed in a political robocall—

(A) the 60-day period ending on the date of any general, special, or run-off election for the office sought by such candidate; and

(B) the 30-day period ending on the date of any primary or preference election, or any convention or caucus of a political party that has authority to nominate a candidate, for the office sought by such candidate.

(4) **OTHER DEFINITIONS.**—The terms "candidate" and "Federal office" have the respective meanings given such terms under section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431).

#### SEC. 4. REGULATION OF POLITICAL ROBOCALLS.

It shall be unlawful for any person during the specified period to make a political robocall or to cause a political robocall to be made—

(1) to any person during the period beginning at 9 p.m. and ending at 8 a.m. in the place which the call is directed;

(2) to the same telephone number more than twice on the same day;

(3) without disclosing, at the beginning of the call—

(A) that the call is a recorded message; and

(B) the identity of the person making the call or causing the call to be made; or

(4) without transmitting the telephone number and the name of the person making the political robocall or causing the political robocall to be made to the caller identification service of the recipient.

#### SEC. 5. ENFORCEMENT.

(a) **ENFORCEMENT BY FEDERAL ELECTION COMMISSION.**—

(1) **IN GENERAL.**—Any person aggrieved by a violation of section 4 may file a complaint with the Federal Election Commission under rules similar to the rules under section 309(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437g(a)).

(2) **CIVIL PENALTY.**—

(A) **IN GENERAL.**—If the Federal Election Commission or any court determines that there has been a violation of section 4, there shall be imposed a civil penalty of not more than \$1,000 per violation.

(B) **WILLFUL VIOLATIONS.**—In the case the Federal Election Commission or any court determines that there has been a knowing or willful violation of section 4, the amount of any civil penalty under subparagraph (A) for such violation may be increased to not more than 300 percent of the amount under subparagraph (A).

(b) **PRIVATE RIGHT OF ACTION.**—Any person may bring in an appropriate district court of the United States an action based on a violation of section 4 to enjoin such violation without regard to whether such person has filed a complaint with the Federal Election Commission.

By Mr. MCCAIN (for himself and Mr. KYL):

S. 1080. A bill to clarify the jurisdiction of the Secretary of the Interior with respect to the C.C. Cragin Dam and Reservoir, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. MCCAIN. Mr. President, I am pleased to be joined by my colleague, Senator KYL, in introducing a bill that would clarify the jurisdiction of the

Bureau of Reclamation over program activities associated with the C.C. Cragin Project in northern Arizona. A companion measure was introduced last month by Congresswoman ANN KIRKPATRICK from Arizona.

Pursuant to the Arizona Water Settlements Act of 2004, AWSA, Congress authorized the Secretary of the Interior to accept from the Salt River Project, SRP, title of the C.C. Cragin Dam and Reservoir for the express use of the Salt River Federal Reclamation Project. While it's clear that Congress intended to transfer jurisdiction of the Cragin Project to the Department of Interior, and in particular, the Bureau of Reclamation, the lands underlying the Project are technically located within the Coconino National Forest and the Tonto National Forest. This has resulted in a disagreement between the Bureau of Reclamation and the National Forest Service concerning jurisdiction over the operation and management activities of the Cragin Project.

For more than two years, SRP and Reclamation have attempted to reach an agreement with the Forest Service that recognizes Reclamation's paramount jurisdiction over the Cragin Project. Unfortunately, the Forest Service maintains that this technical ambiguity under the AWSA implies they have a regulatory role in approving Cragin Project operations and maintenance.

Speedy resolution of this jurisdictional issue is urgently needed in order to address repairs and other operational needs of the Cragin Project, including planning for the future water needs of the City of Payson and other northern Arizona communities. This clarification would simply provide Reclamation with the oversight responsibility that Congress originally intended. I urge my colleagues to support this bill.

#### SUBMITTED RESOLUTIONS

#### SENATE RESOLUTION 152—TO AMEND S. RES. 73 TO INCREASE FUNDING FOR THE SPECIAL RESERVE

Mr. SCHUMER (for himself and Mr. BENNETT) submitted the following resolution; which was considered and agreed to:

S. RES. 152

*Resolved,*

#### SECTION 1. SPECIAL RESERVE FUNDING.

(a) **IN GENERAL.**—Section 20(a) of S. Res. 73 (111th Congress) is amended by striking "\$4,375,000" and inserting "\$4,875,000".

(b) **AGGREGATES.**—The additional funds provided by the amendment made by subsection (a) shall not be considered to be subject to the 89 percent limitation on Special Reserves found on page 2 of Committee Report 111-14, accompanying S. Res. 73.